

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

In re:

WHYCO FINISHING TECHNOLOGY, LLC,
Debtor.

_____ /

FRANKLIN ADVISORS, LLC, etc.,
Plaintiff,

v.

SHERWOOD MANAGEMENT CORP.,
Defendant.

_____ /

Case No. 08-69940

Chapter 11

Judge Thomas J. Tucker

Adv. Pro. No. 10-6850

**OPINION AND ORDER DENYING, WITHOUT PREJUDICE,
PLAINTIFF'S MOTION ENTITLED
"TRUSTEE'S MOTION TO EXCLUDE DOCUMENTS
AND INFORMATION THAT SHERWOOD FAILED TO DISCLOSE"**

This adversary proceeding came before the Court for a hearing on the motion filed by Plaintiff Franklin Advisors, LLC ("Franklin") seeking disclosure/discovery sanctions, entitled "Trustee's Motion to Exclude Documents and Information that Sherwood Failed to Disclose" (Docket # 35, the "Exclusion Motion"). After the hearing, the Court took the Exclusion Motion under advisement. For the reasons stated below, the Court will deny Franklin's Exclusion Motion, without prejudice.

The Exclusion Motion seeks an order precluding Defendant Sherwood Management Corp. ("Sherwood") from using certain specified documents, and from claiming certain specified damage components of its claim filed in the Whyco Finishing, LLC Chapter 11 bankruptcy case.

Franklin seeks such relief on the ground that Sherwood did not timely serve disclosures required under Fed.R.Civ.P. 26(a), Fed.R.Bankr.P. 7026(a), and the Court's scheduling order, and did not timely produce documents and information in discovery. All of the documents at issue were filed by Sherwood after the close of discovery, as exhibits to Sherwood's response to Franklin's motion for summary judgment.¹ Franklin also seeks an order requiring Sherwood to pay Franklin's reasonable expenses, including attorney fees, caused by Sherwood's untimely disclosures.

Today, the Court has filed an opinion and an order, denying Franklin's motion for summary judgment. In making its ruling on that motion, the Court did not rely on any of the documents or information that Franklin seeks to exclude in its Exclusion Motion. Based on the rulings the Court made in its opinion regarding Franklin's summary judgment arguments, the Court is inclined to bifurcate the issues in this adversary proceeding, by holding a separate trial on, and deciding, certain of Franklin's claims before trying and deciding the other claims/issues. *See generally* Fed.R.Civ.P. 42(b), Fed.R.Bankr.P. 7042. Specifically, the Court is inclined, subject to considering any comments from the parties that may be made at a scheduling conference the Court will soon hold, to try, and decide, the following issues/claims first. (The Court was unable to resolve these issues as part of its summary judgment ruling today.) These issues (the "Bifurcated Issues") are:

1. Franklin's argument that Whyco² assigned the Lease to its subsidiary Whyco Detroit

¹ Docket # 33 (Exhibits B, C, O, and P).

² The abbreviations used in this Opinion and Order are the same as those used in the Court's summary judgment opinion filed today.

and was relieved of all obligations under the Lease.

2. Franklin's claim that the automatic renewal of the Lease, for an additional year beginning February 1, 2009, is avoidable as a constructively fraudulent obligation under 11 U.S.C. § 548(a)(1)(B).

3. Franklin's argument that Sherwood's claim should be disallowed in its entirety, or in the alternative, reduced, because Sherwood's initial proof of claim and/or its amended proof of claim were not timely filed.

The Court's ultimate decision on the Bifurcated Issues may make all the remaining substantive issues in this adversary proceeding moot, or may make at least some of those remaining issues moot. For this reason, and also based on the Court's opinion and rulings today regarding Franklin's summary judgment motion, the Court concludes that the Exclusion Motion is in part moot, and/or may be rendered in part, or entirely, moot,³ by the Court's decision on Franklin's summary judgment motion and by the Court's ultimate decision on the Bifurcated Issues.

In order to avoid giving what would be, or may turn out to be, an advisory opinion on the issues raised by the Exclusion Motion, the Court declines to rule on the merits of that motion at the present time. Instead, at this time the Court will deny the Exclusion Motion in its entirety, without prejudice to Franklin's right to renew its request for any of the relief requested in the Exclusion Motion later, after the Court has made a decision on the merits of the Bifurcated

³ Except, perhaps, Franklin's request for an award of reasonable expenses, including attorney fees.

Issues.⁴

For the reasons stated above,

IT IS ORDERED that the Exclusion Motion (Docket # 35) is denied, without prejudice to the extent stated above.

Signed on October 18, 2013

/s/ Thomas J. Tucker
Thomas J. Tucker
United States Bankruptcy Judge

⁴ This includes Franklin's request in the Exclusion Motion for an award of reasonable expenses, including attorney fees.